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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,773	06/05/2002	Frank Volke	31583-178427 RK	3754
26694	7590	08/20/2004	EXAMINER	
VENABLE, BAETJER, HOWARD AND CIVILETTI, LLP			METZMAIER, DANIEL S	
P.O. BOX 34385				
WASHINGTON, DC 20043-9998			ART UNIT	PAPER NUMBER
			1712	

DATE MAILED: 08/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/069,773

Applicant(s)

VOLKE ET AL.

Examiner

Daniel S. Metzmaier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 10-12 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 10-12 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

Claims 10-12 are pending.

#### ***Response to Amendment - Allowable Subject Matter***

1. Applicant's request for reconsideration and in view of the amendment of August 2, 2004; the finality of the rejection of the last Office action is withdrawn.
2. The indicated allowability of claims 10-12 is withdrawn in view of the newly discovered reference(s) to the web cite:

<http://www.chemsoc.org/exemplarchem/entries/2001/loveridge/index-page3.html> and Hawley's Condensed Chemical Dictionary, Eleventh Edition. Rejections based on the newly cited reference(s) follow.

#### ***Requirement under 37 CFR 1.105***

3. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.
4. The information is required to enter in the record the art suggested by the applicant as relevant to this examination in the third full paragraph on page 2 of the instant specification. Therein applicants set forth the use of commercially available media for coupling in transverse ultrasonic waves produced on a honey basis. Said information would include publications, product literature, advertisement, etc..
5. In response to this requirement, please provide the title, citation and copy of each publication that is a source used for the description of the prior art in the disclosure. For

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each publication, please provide a concise explanation of that publication's contribution to the description of the prior art.

6. In responding to those requirements that require copies of documents, where the document is a bound text or a single article over 50 pages, the requirement may be met by providing copies of those pages that provide the particular subject matter indicated in the requirement, or where such subject matter is not indicated, the subject matter found in applicant's disclosure.

7. The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained will be accepted as a complete reply to the requirement for that item.

8. This requirement is an attachment of the enclosed Office action. A complete reply to the enclosed Office action must include a complete reply to this requirement. The time period for reply to this requirement coincides with the time period for reply to the enclosed Office action.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 10-12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Aghajanian et al, US 5,633,213; Wong et al, US 4,691,714; or applicants' admission at the third full paragraph at page 2 of the instant specification wherein commercial honey products have been employed; each of said forgoing reference evidenced by <http://www.chemsoc.org/exemplarchem/entries/2001/loveridge/index-page3.html> , which sets forth the chemical composition of honey and Hawley's Condensed Chemical Dictionary, Eleventh Edition, page 193.

Aghajanian et al (column 47, lines 47-57) discloses measurements taken employing transverse transducers and the use of honey as a couplant.

Wong et al (Table 2, column 8) discloses the use of honey as a coupling agent for testing employing transverse ultrasonic waves.

Applicants (third full paragraph on page 2 of the instant specification) admit the prior known use of honey as a coupling agent and the use of commercial products based on honey.

The web cite, <http://www.chemsoc.org/exemplarchem/entries/2001/loveridge/index-page3.html> , discloses the composition of honey includes disaccharides and higher carbohydrates (i.e., polysaccharides) as well as about 17.1 % water and other compounds including organic acids. Said other compounds includes as acids butanoic acid. Hawley's discloses (page 193) discloses butyric acid (synonymous to butanoic acid) has the known use as an emulsifying agent. Emulsifying agents are known to be surface active.

The claimed invention is deemed anticipated as reading on the art known use of honey as a coupling agent in transmitting transverse waves. The surface-active substance would have been inherent to natural and commercial honey based at least on the butanoic acid therein. Commercial honey has a water content of about 17-20%, which reads on claim 11 and honey is clearly biocompatible as set forth in claim 12.

To the extent the claims differ from the references in the references in the particular application and contact or the homogeneity of the honey, the application and contact is conventional to the known use of a coupling agent in ultrasound testing. Commercial honey is sold as a homogeneous liquid for eastetics. The reduction of

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solids, which may alter the ultrasonic transmission would have been obvious to one having ordinary skill in the art for the advantage of a more accurate testing.

***Response to Arguments***

13. Applicant's arguments with respect to claims 10-12 have been considered but are moot in view of the new ground(s) of rejection.


***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (703) 308-0451. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Daniel S. Metzmaier**  
**Primary Examiner**  
**Art Unit 1712**

DSM